

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

For the Years  
1967 through 1972

“This chapter is not intended to prevent any person from engaging in the practice of measuring human hearing; such person, however, shall not demonstrate or offer for sale hearing aids and accessories.

“This chapter does not apply to a person who is a physician or osteopath duly licensed under the laws of the State of Maine.”

Under the facts given it is the opinion of this office that the described practice of placing a hearing aid upon the person of an individual, whose hearing acuity is being tested, for the purpose of determining the performance of such instrument and following which, recommendation is made that the tested individual obtain a particular hearing aid is the practice of “selection” of a hearing aid for an individual and thus, falls within the definition of the practice of fitting, controlled by the first above cited provision. It is further the opinion of this office that the practice of determining the performance of a particular hearing aid, followed by recommendation as described in the facts is a method of demonstrating hearing aids forbidden by the second above cited provision, unless the person demonstrating the hearing aid is licensed.

32 M.R.S.A. Chapter 23-A is designed to control practices of the type giving rise to the question here under consideration. Once the described practices are completed with respect to an individual, the licensed hearing aid dealer with respect to the individual entering his place of business for the purpose of purchase, is reduced to the level of a retail clerk making a sale without the exercise of judgment or skill for which he is licensed, all of the determinations subject to licensure under the statute are completed by personnel of the hearing and speech center. Such practices fly in the teeth of 32 M.R.S.A. Chapter 23-A and are violative of that Chapter.

Personnel appearing in speech centers involved in practices described in the facts are clearly subject to licensure under Chapter 23-A, and should be advised by the Board for Licensing Hearing Aid Dealers and Fitters to comply with the licensing provisions.

Reference was made in the memorandum received by this office giving rise to this opinion to the fact that the hearing and speech center does not utilize all types of hearing aids in its evaluation and testing process. It is considered unnecessary for us to comment in respect to such fact, further than to say, in view of the result which we reach in this opinion, i.e., the personnel of the hearing and speech center engaged in practices described in the facts are subject to licensure, such fact becomes irrelevant since hearing aid dealers and fitters are free to utilize instruments of their choice.

COURTLAND D. PERRY  
Assistant Attorney General

February 3, 1970  
Forestry

Austin H. Wilkins, Commissioner

Executive Director – Maine Land Use Regulation Commission

#### *SYLLABUS:*

The position of Executive Director of the Maine Land Use Regulation Commission falls within the classified service.

*FACTS:*

Me. Public Laws 1969, c. 494 amended 12 M.R.S.A. by adding new sections 681-689. These sections comprise what is popularly called the "Wildlands Zoning Act", and create a new state agency, designated the Maine Land Use Regulation Commission. Section 685 states:

"The commission is authorized to hire an executive director who shall be the principal administrative, operational and executive employee of the commission."

*QUESTION:*

Does the position of Executive Director of the Maine Land Use Regulation Commission fall within the classified or unclassified service?

*ANSWER:*

The classified service.

*REASON:*

5 M.R.S.A. § 671 provides:

"The classified service shall consist of all persons holding offices and employments now existing or hereafter created in the State service, except persons who are holding or shall hold offices and employments exempted by Section 711."

The position of executive director of the Maine Land Use Regulation Commission does not fall within any of the exemptions listed in 5 M.R.S.A. § 711. It is a position in the State service created after the effective date of 5 M.R.S.A. § 671. Accordingly, it is a position in the classified service.

ROBERT G. FULLER, JR.  
Assistant Attorney General

February 6, 1970  
State

Joseph T. Edgar, Secretary of State

Voting Status of Persons Residing on Federal Property Within the State

*SYLLABUS:*

Civilians residing on Federal property within the boundaries of this State may acquire a legal voting residence in accordance with the Maine Constitution, Article II, Section 1, and if otherwise qualified under State law, may register and vote in the municipality within the physical boundaries of which they so reside.

*FACTS:*

On September 7, 1956, this office rendered an opinion that "a person residing on government property, over which the State of Maine has ceded jurisdiction to the federal